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| 10/029,659 | 10/22/2001 | Otto J. Prohaska | 03141-P0380A WWW/DC | 4969 |
| 24126 | 7590 | 05/24/2007 | | |
| ST. ONGE STEWARD JOHNSTON & REENS, LLC | | | EXAMINER | |
| 986 BEDFORD STREET | | | OLSEN, KAJ K | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 20, 21 and 24-28, 30, 31,33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prohaska et al (USP 6,682,638) in view of either Lawrance or Debe with or without Aldrich.
2. The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).
3. These claims remain rejected over Prohaska and any of Debe or Lawrence for the reasons set forth in the previous office actions. With respect to the new limitation requiring the provision of a hole in the ionomer membrane and the aligning of that hole with the at least one opening of the substrate, Prohaska teaches the use of an opening 6 that extends through both a portion of

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substrate 10 and the ionomer membrane 5 thereby defining a gas passage. See fig. 1 and col. 3, ll. 3-8.

4. With respect to new claims 33 and 34, Prohaska teaches providing a reservoir 9 that is filled with water. See col. 3, ll. 24-31. With respect to providing the reservoir without liquid contact, Prohaska teaches that the reservoir need not be used if the humidity of the atmosphere is sufficient. See col. 3, ll. 27-31.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prohaska in view of any one or more of Lawrance or Debe as applied to claim 20 above and in further view of LaConti.

6. This claim differs by setting forth the use of a polymer layer over the electrode. LaConti teaches the use of a polymer layer 38 over the electrode to attenuate gas flow. See fig. 2 and 5, and col. 5, ll. 52-56. It would have been obvious to one of ordinary skill in the art at the time the invention was being made to utilize the teaching of LaConti for the method of Prohaska and Lawrance or Debe so as to attenuate the gas flow to the sensing electrode.

Response to Arguments

7. Applicant's arguments filed 3-15-2007 have been fully considered and are persuasive against the rejections relying on the primary teaching of EP '041. However, the amendment does not read free of the rejections relying on the primary teaching of Prohaska. Applicant's arguments did not appear to address this rejection.

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Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaj Olsen whose telephone number is (571) 272-1344. The examiner can normally be reached on Monday through Friday from 8:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen, can be reached on 571-272-1342. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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May 23, 2007

A handwritten signature in black ink, appearing to read 'Kaj Olsen', with a stylized flourish at the end.

KAJ K. OLSEN
PRIMARY EXAMINER